

HOUSE No. 4011

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 7, 2007.

The committee on Public Service, to whom were referred so much of the recommendations of the Public Employee Retirement Commission (House, No. 13), as relates to pension reform (accompanied by bill, House, No. 14), and on the petition (accompanied by bill, House, No. 2603) of Jay R. Kaufman and others relative to pension reform, reports recommending that the accompanying bill (House, No. 4011) ought to pass.

For the committee,

JAY R. KAUFMAN.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO PENSION GOVERNANCE REFORM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subdivision (2) of Section 23 of Chapter 32 of the
2 General Laws is hereby amended by striking out sub-
3 paragraph (b) and inserting in place thereof the following:—

4 (b) The board of each system shall invest and reinvest the funds
5 of such system in the PRIT Fund pursuant to subdivision (8) of
6 section twenty two, in the PRIT Fund by purchasing shares of said
7 fund, as provided for in the trust agreement adopted by the PRIM
8 Board pursuant to subdivision (2A) or as follows:—

9 (i) in accordance with the standards set forth in subdivision (3),
10 provided that:—

11 (A) no investment of funds shall be made in stocks, securities
12 or other obligations of any company which derives more
13 than 15 per cent of its revenues from the sale of tobacco
14 products.

15 (B) in investing such funds the board shall employ an invest-
16 ment manager or investment managers who shall invest
17 the funds of the system.

18 (C) no funds shall be invested directly in mortgages or collat-
19 eral loans.

20 No investment of funds shall take place until board has
21 received from the commission an acknowledgement of receipt of
22 the following:-

23 (a) certification that, in making the selection, the board has
24 complied with the process established in section 23A;

25 (b) a copy of the vendor certification required under
26 section 23A;

27 (c) copies of disclosure forms submitted by the selected
28 vendor;

- 29 (d) a certification that the investment is not a prohibited
30 investment as set forth in regulations of the commission;
31 (e) in the event that the board has retained a consultant, a
32 copy of the consultant reports pertaining to the investment
33 and the selected vendor;
34 (f) a copy of the board certification required under
35 section 23A.
- 36 The commission may withhold the acknowledgement if it deter-
37 mines that it is in the best interest of the retirement system pro-
38 vided, however, that it must so notify the board within ten days of
39 receipt of completed documents as required by this section.
- 40 Prior to the retention of an investment consultant the board
41 must receive from the commission an acknowledgement of receipt
42 of the following:—
- 43 (a) certification that, in making the selection, the board has
44 complied with the process established in section 23A;
45 (b) copy of the vendor certification required under
46 section 23A;
47 (c) copies of disclosure forms submitted by the selected con-
48 sultant;
49 (d) copy of the board certification required under section 23A.

1 SECTION 2. Section 50 of Chapter 7 of the General Laws as
2 appearing in the 2004 Official Edition is hereby amended by
3 striking out lines 68 through 69 inclusive.

1 SECTION 3. Clause 19 of paragraph (b) of Section (1) of
2 Chapter 30B of the General Laws is hereby amended by adding
3 the following:—
4 provided, however, that such procurements shall take place in
5 accordance with the provisions of section 23A of chapter 32.

1 SECTION 4. Chapter 32 of the General Laws is hereby
2 amended by adding the following section:—
3 Section 21A. As used in this section the following words shall,
4 unless the context requires otherwise, have the following mean-
5 ings:—
6 “Affiliates”, entities which are affiliates of each other when
7 either directly or indirectly one concern or individual controls or

8 has the power to control another, or when a third party controls or
9 has the power to control both.

10 “Commission”, the Public Employee Retirement Administra-
11 tion Commission.

12 “Contract”, a contract for the furnishing of supplies or services
13 to any retirement board.

14 “Debarment”, an exclusion from contracting or subcontracting
15 with a retirement board for a reasonable, specified period of time
16 commensurate with the seriousness of the offense.

17 “Person”, any natural person, business, partnership, corpora-
18 tion, union, committee, club or other organization, entity or group
19 of individuals.

20 “Retirement board”, a board established pursuant to the provi-
21 sions of chapter 32, the provisions of chapter 34B or the Massa-
22 chusetts water resources authority retirement board, excluding the
23 pension reserves investment management board.

24 “Suspension”, the temporary disqualification of a vendor who
25 is suspected upon adequate evidence of engaging or having
26 engaged in conduct which constitutes grounds for debarment.

27 “Vendor”, any person that has furnished or seeks to furnish sup-
28 plies or services under a contract with a retirement board.

29 (a) The Commission shall establish and maintain a consolidated
30 list of vendors to whom contracts shall not be awarded and from
31 whom offers, bids, or proposals shall not be solicited. The list
32 shall show at a minimum the following information:

33 (1) the names of those persons debarred or suspended in alpha-
34 betical order with appropriate cross reference where more than
35 one name is involved in a single debarment or suspension;

36 (2) the basis of authority for each debarment or suspension;

37 (3) the extent of restrictions imposed;

38 (4) the termination date of each debarment or suspension; and

39 (5) in the case of a suspension, the hearing date, if and when
40 set, for debarment proceedings.

41 The commission shall cause the list to be kept current by the
42 issuance of notices of additions and deletions. The list shall be
43 published on a periodic basis, together with notices of additions
44 and deletions therefrom, in the goods and services bulletin and the
45 central register published by the state secretary and in such other
46 publications as the commission shall designate. The commission
47 shall also forward said list to the inspector general, the attorney
48 general, and the state auditor.

49 (b) Debarment may be imposed for the following causes:

50 (1) conviction or final adjudication by a court or administrative
51 agency of competent jurisdiction of any of the following offenses:

52 (i) a criminal offense incident to obtaining or attempting to
53 obtain a public or private contract or subcontract, or in the
54 performance of such contract or subcontract;

55 (ii) a criminal offense involving embezzlement, theft, forgery,
56 bribery, falsification or destruction of records, receiving
57 stolen property or any other offense indicating a lack of
58 business integrity or business honesty which seriously and
59 directly affects the vendor's present responsibility as a
60 public contractor;

61 (iii) a violation of state or federal antitrust laws arising out of
62 the submission of bids or proposals;

63 (iv) a violation of chapter two hundred and sixty-eight A;

64 (v) a violation of chapter thirty - two-.

65 (2) substantial evidence, as determined by the commission, of
66 any of the following acts:

67 (i) willfully supplying materially false information incident to
68 obtaining or attempting to obtain or performing any public
69 contract or subcontract;

70 (ii) willful failure to comply with record-keeping and
71 accounting requirements prescribed by law or regulation;

72 (iii) a record of failure to perform or of unsatisfactory perfor-
73 mance in accordance with the terms of one or more
74 public contracts, provided that such failure to perform or
75 unsatisfactory performance has occurred within a reason-
76 able period of time preceding the determination to debar
77 and provided further that such failure to perform or unsat-
78 isfactory performance was not caused by factors beyond
79 the vendor's control;

80 (iv) the submission to the board or the commission of an inac-
81 curate disclosure statement

82 (v); the failure to disclose to the board and the commission
83 any compensation provided to any person in regards to
84 attempting to obtain or the performance of a public con-
85 tract or subcontract, including, but not limited to, com-
86 pensation provided by third parties retained by the vendor
87 to any other person;

88 (vi) any other cause affecting the responsibility of a vendor
89 which the commission determines to be of such a serious
90 and compelling nature as to warrant debarment.

91 (c) No vendor may be suspended unless the commission has
92 first informed the vendor by written notice of the proposed sus-
93 pension mailed by registered or certified mail to the vendor's last
94 known address, except when the commission determines that
95 immediate suspension is necessary to prevent serious harm to the
96 retirement system, in which case the suspension shall take effect
97 immediately upon signing by the executive director of an order of
98 suspension, and notice shall be mailed to the vendor at the earliest
99 opportunity. The notice shall inform the vendor of the reasons for
100 the proposed suspension and shall state that the vendor may
101 within fourteen days respond in writing and may in such response
102 request a hearing. The commission may extend the period for
103 response at the request of the vendor. The commission shall deter-
104 mine whether to impose the suspension or, in the case of an emer-
105 gency suspension imposed prior to notice to the vendor, whether
106 to continue the suspension after reviewing the vendor's response,
107 if any, and making such investigation as the commission deter-
108 mines is necessary and appropriate. An indictment, or any infor-
109 mation or other filing by a public agency charging a criminal
110 offense, for any of the offenses listed in paragraph (1) of subsec-
111 tion (c) shall constitute adequate evidence to support a suspen-
112 sion.

113 If the vendor requests a hearing, and the suspension is not
114 based on an indictment, the commission shall conduct a hearing
115 according to the rules for the conduct of adjudicatory hearings
116 established by the secretary of administration pursuant to chapter
117 thirty A. Such hearing shall be initiated within thirty days of the
118 imposition of the suspension, unless the vendor requests that the
119 hearing be delayed. Officers and employees of the commission
120 and records of the commission shall not be subject to subpoena
121 for such hearing, if in the opinion of the commission production
122 of records or testimony would prejudice any pending investigation
123 by the commission.

124 A suspension shall not exceed twelve months unless a pending
125 administrative or judicial proceeding in which the vendor is a
126 party may result in a conviction or final adjudication of an offense
127 listed in paragraph (1) of subsection (c).

128 (d) No vendor may be debarred under this section unless the
129 commission has first informed the vendor by written notice of the
130 proposed debarment mailed by registered or certified mail to the
131 vendor's last known address. The notice shall inform the vendor
132 of the reasons for the debarment and shall state that the vendor
133 will be accorded an opportunity for a hearing if the vendor so
134 requests within fourteen days of receipt of the notice. A hearing
135 requested under this paragraph shall be conducted by the commis-
136 sion within sixty days of receipt of the request, unless the com-
137 mission grants additional time therefore at the request of the
138 vendor. The hearing shall be conducted according to the rules for
139 the conduct of adjudicatory hearings established by the commis-
140 sioner of administration pursuant to chapter thirty A. A debarment
141 shall not be imposed until (i) fourteen days after receipt by the
142 vendor of notice of the proposed debarment if no hearing is
143 requested, or (ii) the issuance of a written decision by the com-
144 mission which makes specific findings that there is sufficient evi-
145 dence to support the debarment and that debarment for the period
146 specified in the decision is required to protect the integrity of the
147 public contracting process. A vendor shall be notified forthwith of
148 the decision by registered or certified mail, and of the vendor's
149 right to judicial review in the event that the decision is adverse to
150 the vendor. If a suspension precedes a debarment, the suspension
151 period shall be considered in determining the debarment period.

152 (e) A debarment or suspension may include all known affiliates
153 of a vendor. The decision to include a known affiliate within the
154 scope of a debarment or suspension shall be made on a case-by-
155 case basis, after giving due regard to all relevant facts and circum-
156 stances. The offense or act of an individual justifying suspension,
157 or the evidence justifying a suspension, may be imputed to the
158 entity with which the individual is connected when such offense
159 or act occurred in connection with the individual's performance of
160 duties for or on behalf of the entity or with the knowledge,
161 approval, or acquiescence of the entity or one or more of its prin-
162 cipals. The entity's acceptance of the benefits derived from the
163 conduct shall be evidence of such knowledge, approval, or acqui-
164 escence. The offense or act of an entity justifying debarment, or
165 the evidence justifying a suspension, may be imputed to any
166 officer, director, shareholder, partner, employee or other indi-

167 vidual associated with the entity who participated in, knew of, or
168 had reason to know of the entity's act. An entity may not be sus-
169 pended or debarred except in accordance with the procedures set
170 forth in this section.

171 (f) In determining whether to debar a vendor, or the period of a
172 debarment, all mitigating facts and circumstances shall be taken
173 into consideration. A debarment may be removed or the period
174 thereof may be reduced by the commission upon the submission
175 of an application supported by documentary evidence setting forth
176 appropriate grounds for the granting of relief, such as newly dis-
177 covered material evidence, reversal of a judgment or conviction,
178 bona fide change of ownership or management, or the elimination
179 of the cause for which the debarment was imposed.

180 (g) During the period for which a person has been debarred or
181 suspended, that person shall not submit or cause to be submitted
182 offers, bids, or proposals to any retirement board, nor shall any
183 retirement board solicit or consider offers, bids, or proposals
184 from, nor execute, renew, or extend any contract with, a debarred
185 or suspended vendor, and a vendor shall not contract for services
186 from a debarred or suspended subcontractor on any contract with
187 a retirement system.

1 SECTION 5. Subdivision (3) of Section 23 of Chapter 32 of
2 the General Laws is hereby amended by adding the following:

3 Each member of a retirement board established pursuant to the
4 provisions of this chapter shall upon the commencement of their
5 term file with the commission a statement acknowledging that
6 they are aware of and will comply with the standards set forth in
7 chapter 268A of the general laws, the provisions of this chapter
8 and the provisions of regulations promulgated pursuant to this
9 chapter.

1 SECTION 6. Chapter 32 of the General Laws is hereby
2 amended by adding the following section:—

3 Section 20C. (a) Every member of a retirement board shall file
4 a statement of financial interests for the preceding calendar year
5 with the commission within thirty days after becoming a member
6 of a retirement board, on or before May first of each year there-
7 after that such person is a member of a retirement board and on or

8 before May first of the year after such person ceases to be a
9 member of a retirement board;

10 (b) The commission shall, upon receipt of a statement of finan-
11 cial interests pursuant to the provisions of this section, issue to the
12 person filing such statement a receipt verifying the fact that a
13 statement of financial interests has been filed and a receipted copy
14 of such statement.

15 (c) No member of a retirement board shall be allowed to con-
16 tinue in his duties unless he has filed a statement of financial
17 interests with the commission as required by this section.

18 (d) The statement of financial interests filed pursuant to the
19 provisions of this section shall be on a form prescribed by the
20 commission and shall be signed under penalty of perjury by the
21 reporting person.

22 (e) Reporting persons shall disclose, to the best of their knowl-
23 edge, the following information for the preceding calendar year,
24 or as of the last day of said year with respect to the information
25 required by clauses (2), (3) and (6) below; such persons shall also
26 disclose the same information with respect to their immediate
27 family provided, however, that no amount need be given for such
28 information with regard to the reporting person's immediate
29 family:

30 (1) the name and address of, the nature of association with,
31 the share of equity in, if applicable, of each business with
32 which he is associated;

33 (2) the identity of all securities and other investments with a
34 fair market value of greater than one thousand dollars
35 which were beneficially owned, not otherwise reportable
36 hereunder;

37 (3) the name and address of each creditor to whom more than
38 one thousand dollars was owed; provided, however, that
39 obligations arising out of retail installment transactions,
40 educational loans, medical and dental expenses, debts
41 incurred in the ordinary course of business, and any oblig-
42 ation to make alimony or support payments, shall not be
43 reported; and provided, further, that such information need
44 not be reported if the creditor is a relative of the reporting
45 person within the third degree of consanguinity or affinity;

- 46 (4) the name and address of the source, and the cash value of
47 any reimbursement for expenses aggregating more than
48 one hundred dollars in the calendar year if the recipient is
49 a member of a retirement board and the source of such
50 reimbursement is a person having a direct interest in a
51 matter before the retirement board of which the recipient
52 is a member;
- 53 (5) the name and address of the donor, and the fair market
54 value, if determinable, of any gifts aggregating more than
55 one hundred dollars in the calendar year, if the recipient is
56 a member of a retirement board and the source of such
57 gift(s) is a person(s) having a direct interest in a matter
58 before the retirement board of which the recipient is a
59 member;
- 60 (6) the name and address of the source, and the fair market
61 value, of any honoraria aggregating more than one hun-
62 dred dollars if the recipient is a member of a retirement
63 board and the source of such honoraria is a person having
64 a direct interest in a matter before a retirement board;
- 65 (7) the name and address of any creditor who has forgiven an
66 indebtedness of over one thousand dollars, and the amount
67 forgiven if the creditor is a person having a direct interest
68 in a matter before a retirement board; provided, however,
69 that no such information need be reported if the creditor is
70 a relative within the third degree of consanguinity or
71 affinity of the reporting person, or the spouse of such a
72 relative; and ,
- 73 (8) the name and address of any business from which the
74 reporting person is taking a leave of absence;
- 75 Nothing in this section shall be construed to require the disclo-
76 sure of information, which is privileged by law.
- 77 Failure of a reporting person to file a statement of financial
78 interests within thirty days after receiving notice in writing from
79 the Commission which states in detail the deficiency and the
80 penalties for failure to file a statement of financial interests, or the
81 filing of an incomplete statement of financial interests after
82 receipt of such a notice shall result in the removal of the reporting
83 person from the board and he or she shall not be permitted to
84 serve on any retirement board established pursuant to the provi-

85 sions of this chapter, provided, however, that, in the event that the
86 reporting person has filed an incomplete statement of financial
87 interests said removal shall be stayed upon the filing of an appeal
88 under sub-division (4) of section 16. In the event the non-com-
89 plying member is an ex-officio member his or her appointing
90 authority shall appoint a different individual to serve on the board
91 or in the event that said member is directly elected by the people a
92 different individual shall be appointed to serve on the board by the
93 Mayor, County Commissioners or Board of Selectman as the case
94 may be.

1 SECTION 7. Clause 26th of Section 7 of Chapter 4 of the
2 General Laws is hereby amended by adding the following sub-
3 clause:—

4 (q) statements filed pursuant to Section 20C of Chapter 32.

1 SECTION 8. Section 20 of Chapter 32 of the General Laws is
2 hereby amended by adding the following paragraph:—

3 (4 7/8 C) No employee, contractor, vendor or any person
4 receiving any remuneration, financial benefit or consideration of
5 any kind, other than a retirement benefit or the statutory stipend
6 for serving on the retirement board, from a retirement board or
7 from any person doing business with a retirement board shall be
8 eligible to serve on a retirement board provided, however, that an
9 employee of a retirement board may serve on a retirement board
10 other than the retirement board by which he or she is employed
11 and provided, further, that the provisions of this paragraph shall
12 apply only to individuals who first become members of a retire-
13 ment board on or after January 1, 2008.

1 SECTION 9. Paragraph (b) of Section 19 of Chapter 34B of
2 the General Laws is hereby amended in line 14 by inserting the
3 following after the word “32”:—

4 Provided that no employee, contractor, vendor or person
5 receiving any remuneration, financial benefit or consideration of
6 any kind, other than a retirement benefit or the statutory stipend
7 for serving on the retirement board, from a retirement board or
8 from any person doing business with a retirement board shall be
9 eligible to serve on a retirement board provided, however, that an

10 employee of a retirement board may serve on a retirement board
11 other than the retirement board by which he or she is employed
12 and provided, further, that the provisions of this paragraph shall
13 apply only to individuals who first become members of a retire-
14 ment board on or after January 1, 2008.

1 SECTION 10. Chapter 32 of the General Laws is hereby
2 amended by adding the following section—

3 Section 23A (a) This section shall apply to every retirement
4 board contract for the procurement of investment, actuarial, legal
5 and accounting services.

6 As used in this section the following words shall, unless the
7 context requires otherwise, have the following meanings:—

8 “Contract”, all types of agreement for the procurement of serv-
9 ices, regardless of what the parties may call the agreement.

10 “Contractor”, a person having a contract with the retirement
11 board.

12 “Retirement board”, a board established under the provisions of
13 this chapter , the provisions of chapter thirty-four B or the massa-
14 chusetts water resources authority retirement board excluding the
15 pension reserves investment management board.

16 “Majority vote”, as to any action by or on behalf of a retirement
17 board, a simple majority of the board.

18 “Minor informalities”, minor deviations, insignificant mistakes,
19 and matters of form rather than substance of the proposal, or con-
20 tract document which can be waived or corrected without preju-
21 dice to other offerors, potential offerors, or the retirement board.

22 “Person”, any natural person, business, partnership, corpora-
23 tion, union, committee, club, or other organization, entity or group
24 of individuals.

25 “Procurement”, acquiring a service, and all functions that per-
26 tain to the obtaining of a service, including description of require-
27 ments, selection and solicitation of sources, preparation and award
28 of contract, and all phases of contract administration.

29 “Procurement officer”, an individual duly authorized by the
30 retirement board to assist in a procurement.

31 “Proposal”, a written offer to provide a service at a stated price
32 submitted in response to a request for proposals.

33 “Purchase description”, the words used in a solicitation to
34 describe the services to be purchased, including specifications
35 attached to or incorporated by reference into the solicitation.

36 “Request for proposals”, the documents utilized for soliciting
37 proposals, including documents attached or incorporated by refer-
38 ence.

39 “Responsible bidder or offeror”, a person who has the capa-
40 bility to perform fully the contract requirements, and the integrity
41 and reliability which assures good faith performance.

42 “Responsive bidder or offeror”, a person who has submitted a
43 bid or proposal which conforms in all respects to the request for
44 proposals.

45 “Services”, the furnishing of labor, time, or effort by a con-
46 tractor, not involving the furnishing of a specific end product
47 other than reports. This term shall not include employment agree-
48 ments, collective bargaining agreements, or grant agreements.

49 (1) A retirement board shall enter into procurement contracts
50 for investment, actuarial, legal and accounting services utilizing
51 competitive sealed proposals, in accordance with the provisions of
52 this section.

53 (2) A retirement board that awards a contract shall maintain a
54 file on each such contract and shall include in such file a copy of
55 all written documents required by this section. Written documents
56 required by this section shall be retained by the retirement board
57 for at least six years from the date of final payment under the con-
58 tract.

59 (a) The retirement board or its procurement officer shall give
60 public notice of the request for proposals and a reasonable time
61 prior to the date for the opening of proposals. The notice shall:

62 (1) indicate where, when and for how long the request for
63 proposal may be obtained;

64 (2) describe the service desired, and reserve the right of the
65 retirement board to reject any or all bids;

66 (3) remain posted, for at least two weeks, in a conspicuous
67 place in or near the offices of the retirement board until
68 the time specified in the request for proposals; and

69 (4) be published at least once, not less than two weeks prior to
70 the time specified for the receipt of proposals, in a news-
71 paper of general circulation within the area served by the
72 retirement board and in the case of a procurement for
73 investment, accounting, actuarial or legal services in a
74 publication of interest to those engaged in providing such
75 services.

76 The retirement board or its procurement officer shall also place
77 the notice in any publication established by the state secretary for
78 the advertisement of such procurements.

79 The retirement board or its procurement officer may distribute
80 copies of the notice to prospective bidders, and may compile and
81 maintain lists of prospective bidders to which notices may be sent.

82 (b) The retirement board shall unconditionally accept a pro-
83 posal without alteration or correction, except as provided in this
84 paragraph. A bidder may correct, modify, or withdraw a proposal
85 by written notice received in the office designated in the request
86 for proposals prior to the time and date set for the proposal
87 opening. After proposal opening, a bidder may not change the
88 price or any other provision of the proposal in a manner prejudi-
89 cial to the interests of the retirement board or fair competition.
90 The retirement board shall waive minor informalities or allow the
91 bidder to correct them. If a mistake and the intended proposal are
92 clearly evident on the face of the proposal document, the procure-
93 ment officer shall correct the mistake to reflect the intended cor-
94 rect proposal and so notify the bidder in writing, and the bidder
95 may not withdraw the proposal. A bidder may withdraw a pro-
96 posal if a mistake is clearly evident on the face of the proposal
97 document but the intended correct proposal is not similarly evi-
98 dent.

99 (c) The retirement board shall solicit proposals through a
100 request for proposals. The request for proposals shall include:

- 101 (1) the time and date for receipt of proposals, the address of
102 the office to which the proposals are to be delivered, the
103 maximum time for proposal acceptance by the retirement
104 board;
- 105 (2) the purchase description and all evaluation criteria that
106 will be utilized pursuant to paragraph (d); and
- 107 (3) all contractual terms and conditions applicable to the pro-
108 curement provided that the contract may incorporate by
109 reference a plan submitted by the selected offeror for pro-
110 viding the required services.

111 The request for proposals may incorporate documents by refer-
112 ence; provided, however, that the request for proposals specifies
113 where prospective offerors may obtain the documents. The retire-
114 ment board or its procurement officer shall make copies of the
115 request for proposals available to all persons on an equal basis.

116 (d) The retirement board or its procurement officer shall not
117 open the proposals publicly, but shall open them in the presence of
118 one or more witnesses at the time specified in the request for pro-
119 posals. Notwithstanding the provisions of section seven of chapter
120 four, until the completion of the evaluations, or until the time for
121 acceptance specified in the request for proposals, whichever
122 occurs earlier, the contents of the proposals shall remain confiden-
123 tial and shall not be disclosed to competing offerors. At the
124 opening of proposals the retirement board or its procurement
125 officer shall prepare a register of proposals which shall include the
126 name of each offeror and the number of modifications, if any,
127 received. The register of proposals shall be open for public
128 inspection.

129 (e) The retirement board or its consultant retained pursuant to
130 the provisions of this chapter shall be responsible for the initial
131 evaluation of the proposals. The retirement board or its consultant
132 retained pursuant to the provisions of this chapter shall prepare
133 their initial evaluations based solely on the criteria set forth in the
134 request for proposals. The evaluations shall specify in writing:

- 135 (1) for each evaluation criterion, a rating of each proposal as
136 highly advantageous, advantageous, not advantageous, or
137 unacceptable, and the reasons for the rating;
138 (2) a composite rating for each proposal, and the reasons for
139 the rating; and
140 (3) revisions, if any, to each proposed plan for providing the
141 required services which should be obtained by negotiation
142 prior to awarding the contract to the offeror of the
143 proposal.

144 In the event the initial evaluation is conducted by a consultant
145 retained pursuant to the provisions of this chapter said consultant
146 shall review all initial evaluations with the retirement board and
147 provide to each member of the retirement board the initial evalua-
148 tion of each proposal.

149 (f) The retirement board shall determine the most advantageous
150 proposal from a responsible and responsive offeror taking into
151 consideration price and the evaluation criteria set forth in the
152 request for proposals. The retirement board shall award the con-
153 tract by written notice to the selected offeror within the time for
154 acceptance specified in the request for proposals. The parties may

155 extend the time for acceptance by mutual agreement. The retire-
156 ment board may condition an award on successful negotiation of
157 the revisions specified in the evaluation, and shall explain in
158 writing the reasons for omitting any such revision from a plan
159 incorporated by reference in the contract.

160 (g)(1) In the event of a competitive process to select an invest-
161 ment service provider the request for proposals shall include
162 mandatory contractual terms and conditions to be incorporated
163 into the contract including provisions stating that the contractor is
164 a fiduciary with respect to the funds which the contractor invests
165 on behalf of the retirement board, provisions stating that the con-
166 tractor shall not be indemnified by the retirement board, provi-
167 sions requiring the contractor to annually inform the commission
168 and the board of any arrangements in oral or in writing, for com-
169 pensation or other benefit received or expected to be received by
170 the contractor or a related person from others in connection with
171 the contractors services to the retirement board or any other client,
172 provisions requiring the contractor to annually disclose to the
173 commission and the retirement board any compensation, in what-
174 ever form, paid or expected to be paid, directly or indirectly, by
175 the contractor or a related person to others in relation to the con-
176 tractors services to the retirement board or any other client, and
177 provisions requiring the contractor to annually disclose to the
178 commission and the retirement board in writing any conflict of
179 interest the contractor may have that could reasonably be expected
180 to impair the contractor's ability to render unbiased and objective
181 services to the retirement board. Other mandatory contractual
182 terms and conditions shall address investment objectives, bro-
183 kerage practices, proxy voting and tender offer exercise proce-
184 dures, terms of employment and termination provisions. The
185 retirement board shall make a preliminary determination of the
186 most advantageous proposal from a responsible and responsive
187 offeror taking into consideration price and the evaluation criteria
188 set forth in the request for proposals. The retirement board or its
189 duly designated agent, subject to the approval of the retirement
190 board, may negotiate all terms of the contract not deemed manda-
191 tory or non-negotiable with such offeror. If, after negotiation with
192 such offeror, the retirement board in consultation with its duly
193 designated agent and its consultant retained pursuant to the provi-

194 sions of this chapter determines that it is in the best interests of
195 the retirement board, the retirement board in consultation with its
196 consultant retained pursuant to the provisions of this chapter may
197 determine the proposal which is the next most advantageous pro-
198 posal from a responsible and responsive offeror taking into con-
199 sideration price and the evaluation criteria set forth in the request
200 for proposals, and may negotiate all terms of the contract with
201 such offeror. The retirement board shall award the contract to the
202 most advantageous proposal from a responsible and responsive
203 offeror taking into consideration price, the evaluated criteria set
204 forth in the request for proposals, and the terms of the negotiated
205 contract. The retirement board shall award the contract by written
206 notice to the selected offeror within the time for acceptance speci-
207 fied in the request for proposals. The time for acceptance may be
208 extended for up to 45 days by mutual agreement between the
209 retirement board and the responsible and responsive offeror
210 offering the most advantageous proposal as determined by the
211 retirement board.

212 On or before January 1 of each year the contractor shall file the
213 disclosures required herein with the board and the commission.
214 Failure to file disclosures or the filing of inaccurate disclosures
215 shall subject the contractor to proceedings under section 21A.

216 (2) The retirement board may cancel a request for proposals or
217 may reject in whole or in part any and all proposals when the
218 retirement board determines that cancellation or rejection serves
219 the best interests of the system. The retirement board shall state in
220 writing the reason for a cancellation or rejection.

221 (3) A person submitting a proposal for the procurement or dis-
222 posal of services to any retirement board shall certify in writing
223 on the proposal as follows:

224 The undersigned certifies under penalties of perjury that this
225 proposal has been made and submitted in good faith and without
226 collusion or fraud with any other person. As used in this certifica-
227 tion, the word "person" shall mean any natural person, business,
228 partnership, corporation, union, committee, club, or other organi-
229 zation, entity, or group of individuals.

230 _____

231 (Signature of individual submitting bid or proposal)

232 _____

233 (Name of business)

234 (4) Each retirement board member shall certify to the commis-
235 sion in writing with respect to a procurement subject to the provi-
236 sions of this section, as follows:

237 The undersigned certifies under penalties of perjury that, to the
238 best of his/her knowledge and belief, this proposal has been made
239 and submitted in good faith and without collusion or fraud with
240 any other person. As used in this certification, the word "person"
241 shall mean any natural person, business, partnership, corporation,
242 union, committee, club, or other organization, entity, or group of
243 individuals.

244 _____

245 (Signature of individual retirement board member)

246 _____

247 (Name of retirement board)

248 (5) No person shall cause or conspire to cause the splitting or
249 division of any request for proposals, proposal, solicitation, or
250 quotation for the purpose of evading a requirement of this section.

251 (6) Unless otherwise provided by law and subject to paragraph
252 (a), a retirement board may enter into a contract for any period of
253 time which serves the best interests of the retirement board; pro-
254 vided, however, that the retirement board shall include in the
255 solicitation the term of the contract and conditions of renewal,
256 extension or purchase, if any.

257 (a) A retirement board shall not award a contract for a term
258 exceeding five years, including any renewal, extension, or
259 option provided, however, that a retirement board may
260 participate in a limited partnership, trust or other entity
261 with a term for a period longer than five years as part of an
262 investment of system assets.

263 When a contract is to contain an option for renewal, extension,
264 or purchase, the solicitation shall include notice of the provision.
265 The retirement board shall retain sole discretion in exercising the
266 option, and no exercise of an option shall be subject to agreement
267 or acceptance by the contractor.

268 (b) The retirement board shall not exercise an option for
269 renewal, extension or purchase unless the retirement
270 board, after reasonable investigation of costs and benefits,
271 has determined in writing that the exercise of the option is
272 more advantageous than alternate means of procuring
273 comparable services.

274 (7) All specifications shall be written in a manner which
275 describes the requirements to be met without having the effect of
276 exclusively requiring a proprietary service, or a procurement from
277 a sole source.

278 (8) All contracts shall be in writing, and the retirement board
279 shall make no payment for a service rendered prior to the execu-
280 tion of such contract.

281 (a) A contract made in violation of this section shall not be
282 valid, and the retirement board shall make no payment
283 under such contract. Minor informalities shall not require
284 invalidation of a contract.

285 (b) A person who causes or conspires with another to cause a
286 contract to be solicited or awarded in violation of a provi-
287 sion of this section shall forfeit and pay to the appropriate
288 retirement board a sum of not more than two thousand
289 dollars for each violation. In addition, the person shall pay
290 double the amount of damages sustained by the retirement
291 board by reason of the violation, together with the costs of
292 any action. If more than one person participates in the vio-
293 lation, the damages and costs may be apportioned among
294 them.

295 (c) The commission or the retirement board shall have
296 authority to institute a civil action to enforce
297 paragraph (b).

1 SECTION 11. Paragraph (a) of subdivision (6) of Section 20 of
2 Chapter 32 of the General Laws, as appearing in the 2002 Official
3 Edition, is hereby amended by striking out lines 842 through 845
4 inclusive and inserting in place thereof the following:—

5 (a) The elected and appointed members of any city, town,
6 county, regional, district, or authority retirement board upon
7 acceptance of the appropriate legislative body shall receive a
8 stipend provided, however, that said stipend shall not be less than
9 three thousands dollars per annum nor exceed seven thousand five
10 hundred dollars per annum; provided further,

1 SECTION 12. Said subdivision, as so appearing, is hereby
2 further amended in line 853 by striking out the words “three thou-
3 sand” and inserting in place thereof the word “seven thousand five
4 hundred”.

1 SECTION 13. Section 20 of Chapter 32 of the General Laws is
2 hereby amended by adding the following sub-division:—

3 (7) During each full term of service retirement board members
4 shall be required to undertake eighteen hours of training provided,
5 however, that no less than three hours take place each year and no
6 more than nine hours take place in any single year.

7 Such training shall consist of nine hours sponsored by the com-
8 mission which shall include, at a minimum, the topics of fiduciary
9 responsibility, ethical conduct, and conflict-of-interest, and nine
10 hours of training on topics prescribed by the commission provided
11 by the Massachusetts Association of Contributory Retirement Sys-
12 tems or other local, state, regional and national organizations rec-
13 ognized by the commission as having expertise in retirement
14 issues of importance to retirement board members or other enti-
15 ties, as the commission may from time to time determine.

16 The commission shall arrange for at least eighteen sessions
17 during each year for members to complete this requirement. In
18 addition, the commission shall schedule additional sessions or
19 otherwise make accommodations to insure that members are
20 afforded the maximum opportunity to complete this requirement.

21 The commission shall provide retirement board with a state-
22 ment of completion of education form on or before December 31
23 of each year. The board shall provide the forms to their members.
24 The form shall set forth the training as required by this sub-divi-
25 sion the member has undertaken during that year. Board members
26 shall submit the completed form to the commission by January 31
27 of the year following. The commission shall provide the member
28 with a summary of his or her status regarding the completion of
29 this requirement by February 1 of each year.

30 Failure to successfully complete the requirements of this sub-
31 division shall prohibit a board member from serving beyond the
32 conclusion of the term in which the failure took place. In the
33 event the non-complying member is an ex-officio member his or
34 her appointing authority shall appoint a different individual to
35 serve on the board or in the event that said member is directly
36 elected by the people a different individual shall be appointed to
37 serve on the board by the Mayor, County Commissioners or Board
38 of Selectmen as the case may be.

39 Each retirement board shall notify all prospective board mem-
40 bers and board members of the requirement to complete education
41 requirements at the time of receiving information about seeking
42 election to a retirement board, or prior to being appointed to a
43 retirement board.

44 The commission shall annually notify board members of the
45 requirement to complete continuing education.

46 The requirements established by this sub-division shall become
47 effective for calendar year 2008.

1 SECTION 14. Chapter 150E section 7 is hereby amended by
2 adding the following new subsection (e):

3 Any employer entering into a collective bargaining agreement
4 with an employee organization must provide a copy of said agree-
5 ment to the retirement board to which the employees covered by
6 the agreement are members. All retirement systems must maintain
7 files of all active collective bargaining agreements which cover
8 the systems members. The retirement board shall review collec-
9 tive bargaining agreements for compliance with the provisions of
10 chapter 32.

1 SECTION 15. Chapter 32 section 21 is hereby amended in
2 line 15 by adding the following new sentence after the word
3 “system”:
4 Each board shall maintain copies of all collective bargaining
5 agreements which cover the systems members and shall make
6 such agreements available to the commission for review at such
7 time as the commission shall specify.